



---

## WISCONSIN LEGISLATIVE COUNCIL

---

*Terry C. Anderson, Director  
Laura D. Rose, Deputy Director*

TO: MEMBERS OF THE ASSEMBLY COMMITTEE ON TOURISM, RECREATION AND  
STATE PROPERTIES

FROM: <sup>SG</sup> Scott Grosz, Staff Attorney

RE: Statutory History of Time-Share Regulation

DATE: September 15, 2009

The following memorandum summarizes the statutory history relating to the regulation of time-shares and time-share licenses.

### **1987 WISCONSIN ACT 399**

1987 Wisconsin Act 399 (the 1987-89 Budget Act) created ch. 707, Stats., relating to the regulation of time-share property in Wisconsin, as well as certain relevant sales tax changes. The content of the 1988-89 Budget Act was preceded by the work of a Legislative Council Special Committee on Legislation on Time-Share Property, which recommended introduction of 1987 Senate Bill 311.

1987 Act 399 created the general structure of ch. 707, Stats., organized in the subchapters that exist in current statutes: general provisions; creation, termination and incidents of time-share ownership; management of time-share property; and protection of purchasers. Notably, Act 399 prohibited the creation of time-share licenses.

### **1999 WISCONSIN ACT 9**

1999 Wisconsin Act 9 (the 1999-2001 Budget Act) clarified the taxation of transfers of time-share property. Prior to Act 9, the taxation of transfers of time-share property was dependent on distinctions between "fixed time" time-shares and "flex time" time-shares. At the time, all Wisconsin time-share sales involved transfer of a property interest by recorded deed. However, "fixed time" time-shares were subject to the real estate transfer fee while "flex time" time-shares were subject to the sales tax. By deleting references to time-share property in the sales tax code and amending references related to the transfer fee, Act 9 imposed the real estate transfer fee, rather than the sales tax, for all time-share transfers.

### **2007 WISCONSIN ACT 18**

Generally, 2007 Wisconsin Act 18 amends ch. 707, Stats., to permit the sale of time-share licenses. Under the Act, a time-share license means "a right to occupy a unit or any of several units under a license or lease agreement during at least 4 separated periods over at least 4 years, including renewal options, not coupled with an interest in property." [s. 707.02 (30), Stats.]

Despite the absence of a property interest in the time-share license, cross-references within ch. 707, Stats., maintain the requirement that a contract for the purchase of a time-share, including a time-share license, must be recorded at the register of deeds. Accordingly, it appears that Department of Revenue (DOR) has the ability to treat the contract for purchase of a time-share license like a deed and to continue to apply the real estate transfer tax to transfers of all time-shares, including time-share licenses, as specified by 1999 Wisconsin Act 9.

### **2009 ASSEMBLY BILL 396**

If enacted, 2009 Assembly Bill 396 would specify that the recording requirement for a contract for the purchase of time-share does not apply to contracts for the sale of time-share licenses. Without clarification, it is unclear whether the bill would affect DOR's ability to apply the real estate transfer fee to the purchase of time-share licenses. Further, it may be argued that the bill has the effect of reviving the sales tax treatment in effect prior to 1999 Wisconsin Act 9, as applied to time-share licenses.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

SG:ksm



**DEWITT  
ROSS & STEVENS<sup>SC</sup>**  
LAW FIRM

www.dewittross.com

Capitol Square Office  
Two East Mifflin Street  
Suite 600  
Madison, WI 53703-2865  
Tel 608-255-8891  
Fax 608-252-9243

Metro Milwaukee Office  
13935 Bishop's Drive  
Suite 300  
Brookfield, WI 53005-6605  
Tel 262-754-2840  
Fax 262-754-2845

Please respond to: Capitol Square Office  
Direct line: 608-252-9391  
Email: aoc@dewittross.com

September 16, 2009

**To: Chairman Terry Van Akkeren and Members of the Assembly  
Committee on Tourism, Recreation and State Properties**

**From: Alice O'Connor**  
*AOC*  
**Representing Wyndham Worldwide Corporation**

**Re: Support AB 396**

Thank you, Members of the Committee, for the opportunity to testify in support of AB 396. 2007 Wisconsin Act 18 was signed into law and removed the prohibition on a specific kind of time-share ownership in Wisconsin known as a "right to occupy" time-share license.

I am here to speak on behalf of Wyndham Worldwide and Wyndham Vacation Ownership, the world's largest time-share vacation ownership business as measured by the number of vacation ownership resorts, individual vacation ownership units and owners of vacation ownership interests with approximately 150 vacation ownership resorts. Wyndham's locations in Wisconsin include the Wisconsin Dells, which is just one of many vacation ownership resorts in its portfolio.

The only reason AB 396 is before you today is due to a simple drafting oversight that no one caught until after the fact and Act 18 was signed into law.

**BACKGROUND**

Act 18 (2007 Senate Bill 11) became law in July 2007 and affected statutes related to "time-share ownership" licenses in Chapter 707. The Act repealed a 22-year old prohibition on the development of a "right to occupy" time-share license in Wisconsin thereby expanding the types of time-share interests that could be developed in our state. When Act 18 passed, it removed Wisconsin as the only remaining state in the nation that did not allow a "right to occupy" time-share license. Until Act 18 passed, Wisconsin only permitted deeded interests in time-share ownership. An individual bought a specific time of year, unit and location with a deed that was recorded as a

September 16, 2009

Page 2

property interest with the Register of Deeds. The expanded definition of time-share ownership increased the likelihood of attracting greater numbers of tourists to Wisconsin as well as fostering infrastructure support to local communities including an increased demand for jobs.

However, the change in the law innocently failed to recognize the differences between deeded time-share ownership and right to occupy time-share ownership with regard to document recordation and that is where the technical problem lies. Section 707.46(3), Wis. Statute currently reads, "A contract for the purchase of a time-share and any other instrument that is evidence of a time-share is valid only if it is recorded."

A "right to use" or "right to occupy" time-share license is not "recorded" at a local Register of Deeds because there is no "deeded interest" or title in any specific property for the individual purchaser. Rather, there is generally a contract that sets forth the terms and conditions for a member and their right to use or occupy the various accommodations in the properties in the time-share plan.

Time-share licenses and their related products are now a significant portion of the time-share interests sold in the United States and represent the majority of time-share interests in other countries. One of Wyndham's time-share products, for example, offers its members a right to occupy more than 25 resort properties in its time-share plan. With the passage of Act 18, right to occupy time-share licenses can be offered to Association members giving them access to Wisconsin Dells resorts. It is not possible, however, to have a single recording of the purchase contract in any one location in Wisconsin as currently required.

The technical correction to the law that is contained in AB 396 will make the Wisconsin Dells property, for example, accessible to a broader number of tourists and ensure that the growing time-share industry and its members continue to see Wisconsin as a desirable tourism destination.

#### **SOLUTION**

AB 396, offered by Representative Fred Clark, makes a technical correction to Section 707.46(3) so right to occupy time-share licenses are more clearly valid here. We are recommending the underlined language. "A contract for the purchase of a time-share and any other instrument that is evidence of a purchase of a time-share, other than a contract or other instrument that is evidence of the purchase of a time-share license, is valid only if it is recorded."

September 16, 2009

Page 3

If our statutes remain unchanged, companies with right to occupy time-share arrangements will have incentives to partner with resorts other than in Wisconsin where language governing time-share licenses are clear. Our tourism industry and Wisconsin resorts that may be attractive businesses for the time-share industry to collaborate with, will be the ones who will miss out on opportunities for those out-of-state tourist dollars coming to Wisconsin. The statutes as currently worded are confusing and AB 396 eliminates this confusion.

Thank you for your consideration and support of AB 396 and its companion bill SB 262.